

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TREMONT REALTY CAPITAL, INC.,

Plaintiff,

v.

PINNACLE GROUP, LLC, ADAMS  
CANYON RANCH, LLC, JOHN LANG,  
and MICHAEL GRADY,

Defendants.

Civil Action No. 04-11853-RGS

PINNACLE GROUP, LLC, ADAMS  
CANYON RANCH, LLC, JOHN LANG,  
and MICHAEL GRADY,

Counterclaim Plaintiffs,

v.

TREMONT REALTY CAPITAL, INC.,

Counterclaim Defendant.

**TREMONT REALTY CAPITAL, INC.'S MOTION TO DISMISS  
COUNTS I, II, III AND VI OF THE FIRST AMENDED COUNTERCLAIM**

In accordance with Fed. R. Civ. P. 9(b), plaintiff/counterclaim defendant Tremont Realty Capital, Inc. ("Tremont") moves to dismiss Counts I, II, III and VI of the First Amended Counterclaim, dated April 15, 2005. These counts are fraud-based causes of action that are not supported by any allegations which would be sufficient to meet the heightened pleading standards under Rule 9(b). Specifically, the counterclaim complaint

makes no allegation concerning who made any of the allegedly fraudulent representations, when they were allegedly made, or to whom they were allegedly made. Similarly, the counterclaim complaint is devoid of any allegation that attempts to explain why these representations, if made, could be construed as fraudulent. As such, these causes of action are legally deficient, and should be dismissed. This motion is supported by a contemporaneously filed memorandum of law.

Wherefore, plaintiff asks that the Court dismiss Counts I, II, III and VI of the First Amended Counterclaim.

TREMONT REALTY CAPITAL, INC.,

By its attorneys,

/S/ Michael S. Day  
James M. Wodarski, BBO# 627036  
Michael S. Day, BBO # 656247  
Joseph V. Cavanagh, BBO # 657671  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
(617) 542-6000

Dated: May 13, 2005

**Rule 7.1(A)(2) Certification**

Pursuant to Local Rule 7.1(A)(2), counsel for Tremont certify that they have conferred with counsel for the Counterclaim Plaintiffs and attempted in good faith to resolve the issues surrounding the Counterclaim Plaintiffs' claims.

/s/ Michael S. Day  
Michael S. Day

**Certificate of Service**

I certify that on this day I caused a true copy of this opposition memorandum to be served on Counterclaimants' counsel of record, William J. Hunt, Clark, Hunt & Emery, 55 Cambridge Parkway, Cambridge, Massachusetts 02142, by first class mail.

Dated: May 13, 2005

/s/ Michael S. Day  
Michael S. Day